

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

TX 2006-050027

08/24/2007

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT
S. Brown
Deputy

PEABODY WESTERN COAL COMPANY

JEFFREY B SMITH

v.

NORTHEAST ARIZONA TECHNOLOGICAL
INSTITUTE OF VOCATIONAL EDUCATION,
et al.

A DEAN PICKETT

JASON MOORE
LANCE B PAYETTE
FRANKLIN J HOOVER

UNDER ADVISEMENT RULING

(Defendant NATIVE's Motion For Summary Judgment and Plaintiff's Motion For Partial Summary Judgment Re: Liability)

There is no dispute as to the underlying facts, only as to the meaning of the applicable statutes. Plaintiff raises two arguments against the legality of the \$1.25 per \$100 rate. The first is that, in approving the formation of the JTED in 2002, the voters based their decision on a rate of five cents per hundred dollars. A.R.S. § 15-392(B) requires that the voters are to be presented with "the tax rate that is associated with joining the" JTED. The statute, however, does not render that rate permanent.

Plaintiff also argues that there existed a statutory limit of five cents per hundred dollars. While such a limit exists under the present version of A.R.S. § 15-393(F), enacted in 2006, it did not exist before 2006. Under A.R.S. § 15-393, a JTED is empowered to levy taxes (or, to be strictly accurate, the county board of supervisors is empowered to levy taxes for the support of the JTED) as prescribed in A.R.S. § 15-991 *et seq.* It follows that a JTED is to be treated as a "school district" under that article, with the taxing powers of school districts. The referenced sections do not impose a five cent limit. The language relied upon by Plaintiff is found in A.R.S.

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§ 15-971(B)(3). That statute provides, to determine the level of equalization assistance for education, the board is to subtract from the revenues in subsection (A), *inter alia*, “[t]he amount that would be produced by levying a qualifying tax rate in a [JTED], which shall be five cents per one hundred dollars assessed valuation unless the legislature sets a lower rate by law.” Under Plaintiff’s interpretation, the subordinate clause modifies “qualifying tax rate” rather than “the amount that would be produced,” and that this language therefore sets an upper limit on the tax levy. Even if the referent is “qualifying tax rate,” Plaintiff’s interpretation is not consistent with the use of the same term in subsections (B)(1) and (B)(2). Those subsections refer to the “qualifying tax rate determined pursuant to § 41-1276.” Section 41-1276 merely instructs the Joint Legislative Budget Committee to calculate the “truth in taxation” rate used to compute equalization assistance. It does not itself fix, or permit the JLBC to fix, the tax rate a district may assess. *See* Atty.Gen.Op. I-79-155 (1979). As A.R.S. § 41-1276 says nothing about JTEDs, it was necessary to find another method to incorporate them into the equalization formula of A.R.S. § 15-971. But nothing in the grammatical structure of subsection (B)(3) suggests that the method chosen, imputing a flat rate of five cents per one hundred dollars for use as the “qualifying tax rate,” was intended to fix a maximum tax levy any more than the statutory references in subsections (B)(1) and (B)(2) were.

The Court does not find any ambiguity in the pre-2006 law. *State v. Sweet*, 143 Ariz. 266 (1985) is not germane. For one thing, HB 2700, which added the five cent limit, made numerous other changes to eight statutes governing JTEDs: it added definitions, it changed the average daily attendance formula for students concurrently enrolled in charter schools and for ninth-graders in career exploration courses, it added a ban on a JTED’s employees serving on its board, it provided specific requirements for intergovernmental agreements between districts, it added a requirement that the JTED file an annual report with the Department of Education, it extended a ban on the formation of new JTEDs except in Pima County, and it changed the formula for equalization assistance. Laws 2006, Ch. 341. Significant additions to prior law require the Court to treat new language as a change rather than a clarification. *San Carlos Apache Tribe v. Superior Court*, 193 Ariz. 195, 209-10 ¶ 31 (1999). More cogently, the earlier statute simply contained no language limiting the tax rate a JTED might assess. It is not for the Court to speculate as to whether the legislature had inadvertently left open a loophole that (perhaps in view of NATIVE’s action) it closed in 2006. Nevertheless, a loophole is not an ambiguity. The Court is not free to impose a five cent limit that the legislature did not impose.

Therefore, IT IS ORDERED:

1. Defendant NATIVE’s Motion for Summary Judgment is granted.
2. Plaintiff Peabody Western Coal Company’s Motion for Partial Summary Judgment Re: Liability is denied.